

MEMORANDUM OF AGREEMENT

Between

North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division

And

The United States Environmental Protection Agency Region 8

I. INTRODUCTION

The North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division (hereinafter Commission) and the United States Environmental Protection Agency, Region 8 (hereinafter EPA or Regional Administrator) have entered into this Memorandum of Agreement (agreement) to delineate the responsibility of authority for all class VI injection well activities. Upon approval by the Regional Administrator, Class VI injection well activities will be implemented into the current North Dakota 1422 Underground Injection Control (UIC) program. This agreement establishes policies, responsibilities, and procedures pursuant to 40 CFR parts 124, 144, 145, 146, and Section 1422 of the Safe Drinking Water Act ("SDWA") for the state of North Dakota UIC program as authorized by Part C of SDWA (P.L. 93-523 as amended; 42 U.S.C. 300f *et seq.*).

This agreement is entered into by the state of North Dakota and signed by Lynn D. Helms, Director of the North Dakota Department of Mineral Resources, Oil and Gas Division and the United States Environmental Protection Agency, Region 8 and signed by James B. Martin, Regional Administrator. This agreement shall become effective when signed by both parties.

II. POLICIES AND AGREEMENTS

A. Agency Responsibilities

The Commission has statutory authority to regulate Class VI injection well activities under NDCC chapter 38-22 and NDAC chapter 43-05-01. Class II injection wells are regulated under the 1425 UIC program through NDAC chapter 43-02-05. The Commission receives a separate program grant from the EPA through the 1425 UIC program for Class II injection wells. Should funding become available for class VI injection well activities the EPA will provide separate funding to the Commission for the administration of the class VI 1422 UIC program. The lead agency for the state of North Dakota 1422 UIC program is the Department of Health, Division of Water Quality that receives the annual UIC program grant for the coordination of class I, III, IV, and V injection well activities, as designated by the Governor of the state. The North Dakota Department of Health, Division of Water Quality has statutory authority over all class I, IV, and V injection well activities. The North Dakota Geological Survey has statutory authority over all class III injection wells. Each state agency is responsible for administering the UIC program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring, compliance, and enforcement actions. This agreement does not change the lead agency program administration status, nor the original intent of the North Dakota UIC program. This agreement is solely intended to add class VI to the current North Dakota 1422 UIC program.

B. Review and Modifications

This State-EPA Agreement (SEA) process shall be reviewed annually as part of the annual program grant, should funding become available for Class VI injection well activities. The annual UIC program grant and the SEA shall be consistent with this agreement and may not override this agreement.

This agreement may be modified upon the initiative of the Commission or EPA. Modifications must be in writing and must be signed by the Director of the Department of Mineral Resources, Oil and Gas Division and the Regional Administrator. Modifications become effective when signed by both parties. Modifications become effective when all signatures are recorded on this agreement.

C. Conformance with Laws and Regulations

The Commission shall administer the North Dakota Class VI UIC program consistent with the state's submission for program approval, this MOA, the SDWA, current federal statutes and regulations, promulgated minimum requirements, state and federal law, and any separate working agreements which shall be entered into with the Regional Administrator in concurrence by the state as necessary for the full administration of the Class VI UIC program.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Commission and EPA staffs to assure successful and efficient administration of the Class VI UIC program. In this partnership, the Regional Administrator will provide to the Commission necessary technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Commission apprised, in a timely manner, of the meaning and content of the federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the Class VI UIC program.

The Commission commits to carry out the Class VI UIC program as outlined in the Class VI primacy application and subsequent modifications to assume Class VI primacy.

It shall be the policy of the EPA and the Commission to minimize paperwork and interagency decision-making procedures and to make the best use of available manpower and funds so as to prevent duplication of effort and unnecessary delays.

E. Sharing of Information

The Commission shall inform the EPA of any proposed, pending, or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions, which might affect the Class VI UIC program and the state's authority to administer the Class VI UIC program.

Pertinent information obtained by the Commission under its Class VI UIC program that may assist EPA in oversight of the UIC program, shall be available upon EPA request. If the information has been submitted to the Commission under a claim of confidentiality, the Commission must submit that claim to EPA when providing EPA such information. Any information obtained from the Commission and subject to a claim of confidentiality will be treated in accordance with 40 CFR, Part 2 and 40 CFR, Part 144.5. If

EPA obtains information from the Commission that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish the Commission the information in its files which the Commission needs to implement its Class VI program. Information submitted to EPA under a claim of confidentiality shall be subject to EPA regulations governing confidentiality (40 CFR, Part 2) and federal provisions governing data transfer.

F. Duty to Revise Program

As stated in 40 CFR 145.32(e), within 270 days of any amendment to any regulation promulgated under 40 CFR 124, 144, 145 or 146 revising or adding any requirement respecting the Class VI UIC program, the Commission shall submit notice to EPA showing that the Class VI UIC program is as stringent as the revised or added requirements.

G. Duration of MOA

This agreement will remain in effect until such time as state primacy enforcement responsibility is returned to EPA by the state, or withdrawn by EPA, according to the provisions of 40 CFR Part 145.31.

H. General Provisions

Nothing in this agreement is intended to affect any UIC program requirement, including any standards or prohibitions, rules, regulations, or polices, established by the Commission or local law, as long as the state or local requirements are no less stringent than or are deemed equally protective as:

1. Any set forth in the UIC regulations; or
2. Other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this agreement shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other sections of the SDWA.

III. PERMITTING

A. General

The Commission is responsible for all Class VI injection well permitting procedures as detailed in the state's Class VI primacy package, in the revised North Dakota 1422 UIC program description, and pursuant to state and federal laws, rules, and regulations.

Permits for Class VI injection wells will be issued under the authority of NDCC chapter 38-22 and NDAC chapter 43-05-01. Class VI injection well permits will be issued by the Commission.

IV. COMPLIANCE MONITORING

A. General

The Commission shall operate a timely and effective compliance monitoring system to track compliance with program requirements as outlined in the revised 1422 UIC program description. For purposes of this agreement, the terms “compliance monitoring” or “compliance evaluation” shall refer to all efforts associated with determining compliance with Class VI UIC program requirements.

B. Compliance Schedule

The Commission agrees to maintain procedures to receive, evaluate, retain, and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The Commission shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Commission shall conduct a timely and thorough review of all such reports to determine compliance status. The Commission shall operate a tracking system to determine if:

1. The reports required by permits and program regulations are submitted;
2. The submitted reports are complete and accurate; and
3. The program requirements are met.

D. Inspection

The Commission agrees to have inspection procedures to determine compliance or noncompliance with the applicable requirements of the Class VI UIC program. The Commission shall conduct inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all Class VI UIC program requirements and include selecting and evaluating a facility’s monitoring and reporting program. These inspections shall be conducted to determine compliance or noncompliance with the issued permits, verify the accuracy of information submitted by operator in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information. These inspections may be announced or unannounced.

E. Authority to Enter

The Commission (and other state agency designees) engaged in compliance monitoring and evaluation shall have the authority to enter any site or premises subject to regulation or to review and copy the records of relevant program operations where such records are kept.

F. Admissibility

Any investigatory inspections shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

V. ENFORCEMENT

A. General

The Commission is responsible for taking timely and appropriate enforcement action against persons in violation of Class VI UIC program requirements, compliance schedules, technical requirements, and other UIC program requirements.

The EPA shall be notified of any enforcement actions taken by the Commission. Failure by the state to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the state has failed to take timely enforcement action.

B. Enforcement Mechanisms

The Commission shall have the mechanism to restrain immediately and effectively any person engaging in any unauthorized activity or operation, which is endangering or causing damage to public health or the environment as applicable to the program requirements. The state also has the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. Additionally, the state is authorized to sue to recover civil penalties and criminal remedies as established in NDCC section 38-22-18.

C. Assessment of Fines

The state shall agree to assess civil penalties in amounts appropriate to the violation as required in NDCC section 38-22-18.

VI. EPA OVERSIGHT

A. General

EPA, Region 8, shall oversee the Commission's administration of the Class VI UIC program on a continuing basis to assure that such administration is consistent with this MOA and all applicable requirements embodied in current regulations, statutes, and federal law.

In addition to the specific oversight activities listed in this section, EPA may from time to time request pertinent information related to the oversight of the Class VI UIC program, and the Commission shall submit and provide access to files necessary for evaluating the state's administration of the Class VI UIC program.

B. Immediate Reporting on Noncompliance

The Commission shall notify the Regional Administrator, of any major, imminent hazard to public health resulting from the endangerment of an underground source of drinking water of the state by Class VI injection well activities.

C. Program Reports

Federal requirement CFR 146.91(e) regardless of whether a State has primacy enforcement responsibility, owners or operators must submit all required reports, submittals, and notifications under Subpart H of Part 146 to EPA in an electronic format approved by EPA.

D. Quarterly Program Reports

The Department shall submit to the Regional Administrator of EPA quarterly program reports as specified in 40 CFR, Part 144.8(a) and as outlined in the UIC program description and consistent with current UIC Program Guidance.

<u>EPA Form</u>	<u>Description</u>
7520-1	Part I: Permit Review and Issuance/Wells in Area of Review
7520-2A	Part II: Compliance Evaluation
7520-2B	Part III: Significant Noncompliance
7520-3	Part IV: Inspections, Mechanical Integrity Testing

Quarterly reports will be submitted in accordance with the following schedule:

<u>Quarter</u>	<u>Report Due to Regional Administrator</u>
October, November, December	January 30
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30

E. Annual Program Reports

The Commission shall submit an annual program report as specified by CFR 144.8 and by EPA continuing grant guidance to the Regional Administrator 60 days after end of fiscal year. The report is for the period of October 1 through September 30 (federal fiscal year) and shall consist of the following:

- 1) A well inventory consisting of the facility name and ID, location, well type, and well status.
- 2) A written summary of the major program activities completed and in progress during the fiscal year as identified in the work plan.

F. Major Facilities

Major facilities shall include: All Class VI Injection Wells

G. Aquifer Exemptions

Other than EPA approved aquifer exemption expansions that meet the criteria for exempted aquifers, new aquifer exemptions shall not be issued for Class VI injection well activities. Even if an aquifer has not

been specifically identified by the Director, it is an underground source of drinking water if it meets the definition.

H. Mechanical Integrity

The Commission may allow the use of a test to demonstrate mechanical integrity other than those listed in the program description. Any alternative mechanical integrity test must receive written approval from the Administrator prior to implementation and be consistent with the requirements of 40 CFR 146.89(e).

I. Inspection and Surveillance by EPA

The Regional Administrator may select Class VI injection well facilities and activities within the state for EPA inspection. EPA may conduct such inspections jointly with the state. The Commission shall give the Regional Administrator adequate notice to participate in occasional compliance evaluation inspection scheduled by the state. The Regional Administrator may also choose to conduct inspections independently of the state's schedule. In such cases, the EPA shall notify the Commission of any proposed Class VI injection well facility inspection within the state of North Dakota at least fourteen (14) days before any inspection that EPA determines to be necessary. This procedure will allow coordination of scheduling and allow joint inspections. However, if an emergency exists, or for some reason it is impossible to give advance notification, the Regional Administrator may waive advance notification to inspect a facility. In keeping with Section 1445(b) (2) of SDWA, the state understands not to inform the person whose property is to be entered of the pending inspection.

J. Annual Performance Evaluation

EPA shall conduct, at least annually, performance evaluations of the North Dakota Class VI UIC program using program reports and other pertinent requested information to determine state program consistency with its UIC program submission, the SDWA, and applicable state and federal regulations. The review will include progress towards program implementation, changes in the program description, and efforts towards progress on program elements.

EPA shall submit a summary of the evaluation findings to the state outlining the deficiencies in program performance and recommendations for improving state operations. The report also might provide guidance for the development of an upcoming grant application, should funds become available for Class VI activities. The state shall have 30 working days from the date of receipt to concur with or comment on the findings and recommendations.

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this agreement

North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division

By _____ Lynn D. Helms, Director

Date_____

United States Environmental Protection Agency, Region 8

By _____ James B. Martin, Regional Administrator

Date_____